

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CITY OF DETROIT,

Plaintiff,

v.

Case No. 03-CV-74279-DT

TXU ENERGY RETAIL COMPANY, L.P.
f/k/a TXU ENERGY SERVICES and
SEMINOLE ENERGY SERVICES,

Defendants.

OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

On April 6, 2007, Defendant Seminole Energy Services, L.L.C. ("Seminole") filed a "Motion for Order in Aid of Execution Regarding Payment of Interest." Seminole represented in its motion that it "previously engaged in a conference with counsel for Plaintiff pursuant to Local Rule 7.1(a) in an attempt to seek concurrence with the relief requested by this motion; however, the parties were unable to agree." (Defs.'s Interest Mot. at 1.) Nonetheless, Plaintiff City of Detroit (the "City") failed to file an answer as required by Eastern District of Michigan Local Rule 7.1(b).

On May 7, 2007, the court entered an order granting in part and denying in part Seminole's motion. In that order, the court granted Seminole's motion "as to the pre-judgment interest, which will be calculated at as set forth in the Payment Ordinance," and denied Seminole's motion as to the post-judgment interest, awarding post-judgment interest "at the Federal post-judgment rate." (5/7/07 Order at 3-4.) The court further ordered Seminole to "submit a proposed order reflecting the outstanding interest owing

through May 2007, re-calculated pursuant to this order.” (*Id.* at 4.) On May 31, 2007, Seminole submitted revised interest calculations and represented that the City owed Seminole \$211,869.08 in outstanding interest. (5/31/07 Exhibit.) The City failed to file either a response or an objection to this exhibit. The court therefore entered a July 9, 2007 order directing the City to pay Seminole \$211,869.08 in outstanding interest on or before July 16, 2007. The City paid Seminole and filed a July 23, 2007 motion for reconsideration, challenging Seminole’s calculations, adopted by the court, as to the interest owed. The court permitted Seminole to file a response to the City’s motion for reconsideration.

Although the City has filed its motion for reconsideration in a timely¹ fashion, the court finds that the City’s current protestations have arrived too late. The City was aware, before Seminole filed its motion for interest, of Seminole’s intent to do so. As an electronic filer, the City also received an electronic notice of Seminole’s motion as soon as it was filed. Despite being aware of the motion, and despite apparently opposing (or at least not concurring in, see E.D. Mich. LR 7.1(a)) Seminole’s factual basis for the motion and request for relief, the City filed no response as required by the court’s local rules and stated no concern. The City remained silent even after Seminole filed a revised statement of the interest the City allegedly owed, despite having over a month to do so. The court was justified in concluding that the City simply re-thought its original position and, in its silence, assented. Only after the court issued its order requiring the

¹Seminole argues that the City’s motion for reconsideration was untimely. The court finds that the motion for reconsideration was timely filed under Eastern District Local Rule 7.1(g)(1) and Federal Rule of Civil Procedure 6.

City to pay Seminole \$211,869.08 in outstanding interest, which relied on Seminole's undisputed calculations, does the City now raise an alleged calculation error that Seminole presented to the court both in its May 31, 2007 revised calculations and in its original motion. The court determines that, in choosing not to object to either Seminole's motion or its supplemental calculations, the City did so at its peril and has waived its right to contest the calculation of interest or to otherwise be heard on this issue. Accordingly,

IT IS ORDERED that "Plaintiff City of Detroit's Motion for Rehearing of Order Awarding Interest" [Dkt. # 170] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 6, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 6, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522